HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 24602 OF 2002

BETWEEN

V. Gangadhara Rao

.....**Petitioner**

And

Government of India,
Rep. by its Under Secretary,
Ministry of Home Affairs,
Freedom Fighters Division,
New Delhi & another

.....**Respondents**

:: O R D E R::

Counsel for the Petitioner : Shri Srinivasa Rao Bodduluri

Counsel for Respondent No.1 : Shri A. Rajasekhar Reddy

Dated: 29.08.2006

This is the second round of litigation by the petitioner in the matter of grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme').

The petitioner claims to have participated in the freedom

struggle launched by Hyderabad State Congress against the Government of Nizam between 1947-1948. In order to avoid execution of arrest warrant issued by the Government of Nizam, the petitioner is said to have gone underground and joined the Congress Boarder Camp at Machinenipalem Village of the then Nandigama Taluk in Krishna District. He also claims to have received arms training at Paritala Arms Training Center, participated in the encounters with the Nizam's military at Bhimavaram (now a part of Khammam District), removed fish plates of railway tracks and involved himself in cutting telegraphic wires besides derailing the goods train and using dynamites at Gangineni and Yerrrupalem Railway Stations. In 1992, he made an application for grant of pension under the 1980 Scheme. Vide memo dated 10.02.1992, the State Government sent his application to Collector, Khammam with a direction to check the documents with original record and submit report regarding their genuineness. After about one year and five months, District Collector, Khammam sent letter dated 16.07.1993 to Secretary to Government, Revenue (FF) Department, the relevant extracts of which are reproduced below:

> " I invite kind attention to the Govt. Memo 1st cited. On receipt of the application of Sri V. Gangadhar Rao, S/o Satyanarayana, R/o Madhira (V) & Mandal for grant of Freedom Fighter Pension under Central Scheme, the matter has been referred to the Revenue Divisional Officer,Khammam for enquiry and report. The Revenue Divisional Officer, Khammam submitted his report vide reference 2nd cited and stated that the Mandal Revenue Officer, Madhira had conducted enquiry and reported that the applicant had participated in freedom struggle against the Nizam Govt. for merger of Hyderabad state into Indian Union for his anti-Nizam's Govt. activities, a warrant of arrest has been issued against the applicant. On

knowing the issue of arrest warrant, the applicant went underground. THE REVENUE DIVISONAL OFFICER HAS ALSO REPORTED THAT THE CERTIFIED COPY OF THE COURT DOCUMENT SUBMITTED BY THE APPLICANT HAS BEEN GOT VERIFIED BY THE DIST. AND SESSONS JUDGE, KHAMMAM AND CONFIRMED IT AS GENUINJE ONE. Further the Revenue Divisional Officer, expressed his doubt about the age of the applicant, since he failed to produce the study certificate. Hence, a memo has been issued to the applicant vide reference 3rd cited to produce the study certificate. The applicant submitted a petition stating that he did not study in any recognized school and studied in private school, as such he is unable to produce the date of birth certificate, except the health and age certificate issued by the Civil Asst. Surgeon, Madhira. In view of the above, the application for grant of freedom fighter pension under central scheme to the applicant is recommended.

The application along with enclosures received through the Govt. Memo 1st cited together with the record of enquiry of the Revenue Divisional Officer and submitted herewith for further necessary action."

Thereafter, the State Government forwarded the petitioner's case to Deputy Secretary to Government of India, Ministry of Home Affairs (Freedom Fighters Division). However, the latter rejected his claim for grant of pension on the ground that he had failed to establish underground suffering for more than six months. This was conveyed to Secretary to Government of Andhra Pradesh, Revenue (FF.II) Department vide communication dated 09.12.1993. After some correspondence, the Government of India vide letter dated 12.01.1995 again rejected the petitioner's claim for grant of pension by reiterating that the documentary evidence produced by him does not establish his underground suffering.

The petitioner challenged the aforementioned

communication in Writ Petition No.1047 of 2002 which was disposed of by the learned Single Judge on 24.01.2002 with a direction to the respondents to reconsider his claim for grant of pension.

In compliance of the direction given by the Court, the Government of India reconsidered the petitioner's claim for grant of pension under the 1980 Scheme, but declined the same by recording the following reasons:

> " The State Government vide their report dated 10.09.1993 forwarded your case for grant of pension on the basis of the court documents produced by the applicant, but the same is not acceptable under the provisions of Swatantrata Sainik Samman Pension Scheme for the reasons stated above. Your claim was considered under the provisions of the Scheme and rejected vide this Ministry's letter dated 12.01.1995 for the reason that you have not produced any acceptable evidence in support of your claimed underground sufferings for more than six months. However, the documentary evidence produced by you also did not establish your underground suffering. The State Government has recommended your case on the basis of arrest warrant issued against you. In this connection it is stated that issue of arrest warrant is no criteria for grant of Swatantrata Sainik Samman Pension unless the same is followed by any one of the specified conditions/order i.e. a proclaimed offender, award on head/arrest or detention order. The documents produced by you do not indicate the above details. You have not submitted any documents in support of the above conditions as required under the Scheme.
>
> Your review petition dated 12.11.1996 has been carefully considered in this Ministry, but it has been found that you have not submitted any additional/fresh evidence/documents to sustain your underground sufferings of six months disclosing full details of the case, as per the provisions of the Scheme."

In the affidavit filed by him, the petitioner has averred that the reasons assigned by Government of India for refusing to entertain his claim for being treated as a freedom fighter are legally untenable. He has strongly relied on communication dated 10.09.1993 sent by Government of Andhra Pradesh to Government of India, recommendation letter dated Nil issued by Mandal Revenue Officer, Madhira, Personal Knowledge Affidavit dated 20.06.1984, certificate dated Nil issued by Shri Vattikonda Kotaiah, Camp In-charge, Machinenipalem Congress Boarder Camp and communication dated 15.03.1994 issued by Principal Munisf Magistrate, Khammam and pleaded that the genuineness of his assertion that he had remained underground in pursuance of the arrest warrant issued by Government of Nizam cannot be doubted.

In the counter-affidavit filed on behalf of the Government of India by Sri S.D. Kaushik, Under Secretary in the Ministry of Home Affairs, it has been pleaded that the petitioner's case for grant of pension under the 1980 Scheme was considered in the backdrop of order dated 24-1-2002 passed by the High Court in Writ Petition No.1047 of 2002, but the same was not found tenable. Sri Kaushik has referred to several judgments of the Supreme Court and different High Courts and averred that the freedom fighters pension cannot be sanctioned under the 1980 Scheme unless the applicant establishes his status as a freedom fighter.

Shri Srinivasa Rao Bodduluri, learned counsel for the petitioner argued that the report sent by Government of Andhra Pradesh to Government of India certifying the genuineness of the documents produced by the petitioner in support of his claim of having remained underground for a period of more than six months could not have been brushed aside by the concerned authority

without assigning cogent reasons. Learned counsel heavily relied on the fact that Mandal Revenue Officer, Madhira had recorded statement of the petitioner as also of Shri Hari Appa Rao and Shri Itam Venkateswarlu who had participated in the camp at Machinenipalem and argued that if the statements of the persons who had attended the boarder camp along with the petitioner are considered in conjunction with the certificate issued by Shri Vattikionda Kotaiah, Camp In-charge, Machinenpalem Congress Boarder Camp and Personal Knowledge Affidavit filed by the petitioner, his status as a freedom fighter cannot be questioned. Learned counsel submitted that the doubt expressed by the Government of India on the genuineness of the certificate issued by the Camp In-charge is not substantial and, therefore, communication dated 10.02.2002 may be quashed and a direction may be issued to respondent No.1 to sanction pension in favour of the petitioner.

Shri A. Rajasekhar Reddy, learned Assistant Solicitor General emphasized that the certificate issued by the Camp In-charge does not bear any date and, therefore, the same cannot be made basis for recording a finding that the petitioner had remained underground for a period of six months. He invited the Court's attention to paragraph 2, 2.1, 2.2 and 2.3 of the 1980 Scheme and argued that the petitioner's claim for grant of pension was rightly rejected because he could not establish the factum of having remained underground.

I have thoughtfully considered the respective arguments and carefully scanned the entire record. A look at the certificate dated nil issued by Shri Vattikonda Kotaiah, Camp In-charge, Machinenipalem Congress Boarder Camp shows that the same was issued by the author on a printed proforma. The reason

why Shri Vattikonda Kotaiah did not indicate the date either below his signatures or elsewhere in the certificate certainly casts doubt on the genuineness thereof. This doubt is further strengthened by the contents of letter Dis.No.109/19/3/94 dated 15.03.1994 sent by Principal Munsif Magistrate, Khammam to Secretary, Government of Andhra Pradesh, Revenue (FF.I) Department, perusal of which shows that the petitioner had remained underground for more than six months as per the record of the Court. If the petitioner had remained underground and attended the camp where Shri Vattikonda Kotaiah was the incharge, how could the court record contain a mention of his having remained underground pursuant to the arrest warrant pertaining to Case No.111/5/1357 dated 15.03.1357 F. This has not been explained by the petitioner. The statement made by Shri Hari Appa Rao and Itam Venkateswarlu who are said to have been the companions of the petitioner in the camp organized by the Congress party have not been produced to enable the Court to examine their credibility. This further puts a question mark on the bona fides of the petitioner's assertion that he had remained underground in pursuance of the arrest warrant issued by the erstwhile Government of Nizam.

In view of the above, I am inclined to approve the decision taken by the Government of India not to sanction pension to the petitioner under the 1980 Scheme.

For the reasons stated above, the writ petition is dismissed. However, it is made clear that this order shall not preclude the petitioner from submitting fresh application for grant of pension by producing cogent evidence to show that he had actually remained underground and his case falls within the parameters enumerated in para 2, 2.2 and 2.3 of the 1980 Scheme.

As a sequel to dismissal of the writ petition, interim order dated 12.12.2002 passed by this Court shall stand automatically vacated.

G.S.SINGHVI, CJ

ksld
29.08.2006